

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHARLENE LEMOINE,
Plaintiff,

v.

EMPIRE BLUE CROSS BLUE SHIELD AND
XYZ CORPS. 1-10,
Defendants.

Civil Action No. 16-6786

ORDER

John Michael Vazquez, U.S.D.J.

This matter comes before the Court on Defendant Empire Blue Cross Blue Shield's ("Defendant") motion to dismiss Plaintiff's Complaint. D.E. 7. Plaintiff filed her Complaint on August 19, 2016 in the New Jersey Superior Court in Bergen County, alleging breach of contract due to Defendants' failure to pay her medical bills pursuant to her insurance plan. D.E. 1, Ex. A. On October 7, 2016, Defendant removed the action to this Court, alleging Plaintiff's claims were preempted by the Employee Retirement Income Security Act ("ERISA"). D.E. 1. Subsequently, Defendant filed the present motion, which Plaintiff opposed in part. D.E. 7, 15, 18. On May 30, 2017, the Court held a telephone conference with counsel on the record; and it

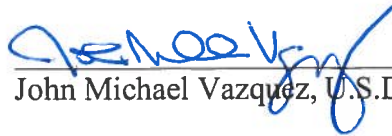
APPEARING that Defendant argues that Plaintiff's claims are preempted by ERISA and should be dismissed with prejudice because any amendment would be futile; and it

APPEARING that Plaintiff agrees that ERISA governs the present dispute, but argues that she should be given the opportunity to re-plead her claims pursuant to ERISA; and

For the reasons stated on the record on May 30, 2017, and for good cause shown,

IT IS on this 30th day of May 2017,

ORDERED that Defendant's motion is **GRANTED** and Plaintiff's Complaint is dismissed without prejudice.¹ Plaintiff has forty-five (45) days to file an amended complaint, if she so chooses.²


John Michael Vazquez, U.S.D.J.

¹ The Court grants Defendant's motion *without* prejudice over Defendant's objection. D.E. 7, 18.

² As the Court informed Plaintiff's counsel on the record, if Plaintiff fails to file an amended complaint within forty-five days of this Order or otherwise fails to take action or seek a modification of the filing deadline within the forty-five days, her Complaint shall be dismissed *with* prejudice.